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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 EASTERN DIVISION

11 JOSHUA A. PEERMAN, } Case No. 5:18-cv-01955-PA (JDE)  
12                      Petitioner, }  
13                      v.            } ORDER SUMMARILY  
14 W.L. MONTGOMERY, Warden, } DISMISSING PETITION FOR  
15                      Respondent. } WRIT OF HABEAS CORPUS FOR  
16                                    } LACK OF SUBJECT MATTER  
17                                    } JURISDICTION AND  
18                                    } REFERRING THE PETITION TO  
19                                    } THE NINTH CIRCUIT COURT OF  
20                                    } APPEALS PURSUANT TO NINTH  
21                                    } CIRCUIT RULE 22-3(A)

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I.

INTRODUCTION

Petitioner Joshua A. Peerman (“Petitioner”) filed the instant Petition for Writ of Habeas Corpus by a Person in State Custody under 28 U.S.C. § 2254 (Dkt. 1, “Petition” or “Pet.”) challenging the legality of his custody stemming from a California state court criminal conviction in 2014. For the reasons set forth below, the Petition is dismissed for lack of subject matter jurisdiction and referred to the Ninth Circuit pursuant to Ninth Circuit Rule 22-3(a).

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1 the appropriate court of appeals for an order authorizing the  
2 district court to consider the application.

3 “If the petition is second or successive, then the district court lacks jurisdiction  
4 and must dismiss the petition unless and until the court of appeals grants an  
5 application to file it.” Brown v. Muniz, 889 F.3d 661, 667 (9th Cir. 2018)  
6 (citing § 2244(b)(3)(A). “In evaluating such an application, the court of appeals  
7 is bound by § 2244(b)'s gatekeeping requirements.” Id.

8 Petitioner previously filed a Section 2254 petition challenging the same  
9 2014 conviction challenged in the instant Petition. Petitioner’s Prior Action  
10 was dismissed with prejudice on the merits, and the facts underlying the  
11 instant Petition existed at the time of the Prior Action. Thus, the Petition now  
12 pending constitutes a second and/or successive petition. As such, it was  
13 incumbent on Petitioner under Section 2244(b)(3)(A) to secure an order from  
14 the Ninth Circuit authorizing the District Court to consider the Petition, prior  
15 to his filing of it in this Court, and his failure to do so deprives the Court of  
16 subject matter jurisdiction. See Brown, 889 F.3d at 668; Cooper v. Calderon,  
17 274 F.3d 1270, 1274 (9th Cir. 2001).

18 B. “REFERRAL” OF HABEAS PETITION TO NINTH CIRCUIT

19 Ninth Circuit Rule 22-3(a) states, in pertinent part, that “[i]f an  
20 unauthorized second or successive section 2254 petition or section 2255  
21 motion is submitted to the district court, the district court may, in the interests  
22 of justice, refer it to the Court of Appeals.”

23 The Court notes that in the caption of his attachment to the Petition,  
24 Petitioner refers to the Court as “US District Court 9th Circuit.” Pet. at 13  
25 (CM/ECF pagination). To the extent Petitioner mistakenly submitted the  
26 Petition to this Court instead of the Ninth Circuit, it should be referred to the  
27 Ninth Circuit. Although it is unclear whether the district court may both  
28 “refer” a petition to the Ninth Circuit and, at the same time, dismiss the

1 petition, the Court concludes that simultaneous referral and dismissal is  
2 appropriate. See Cielto v. Hedgpeth, 2014 WL 1801110, at \*3 (C.D. Cal. Apr.  
3 23, 2014).


4 **IV.**

5 **ORDER**

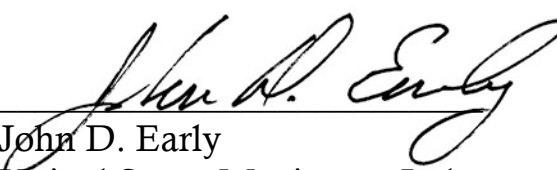
6 Pursuant to Ninth Circuit Rule 22-3(a), the Court refers the Petition to  
7 the United States Court of Appeals for the Ninth Circuit for consideration as  
8 an application for leave to file a second or successive habeas petition. The  
9 Clerk of Court shall send a copy of the Petition and a copy of this Order to the  
10 Clerk of the United States Court of Appeals for the Ninth Circuit. The Clerk of  
11 Court shall provide Petitioner with a form recommended by the Ninth Circuit  
12 for filing an Application for Leave to File Second or Successive Petition Under  
13 28 U.S.C. § 2254 or Motion Under 28 U.S.C. § 2255.

14 In addition, pursuant to Rule 4 of the Rules Governing Section 2254  
15 Cases in the United States District Court and Local Rule of Court 72-3.2, IT IS  
16 ORDERED that judgment be entered summarily dismissing the Petition  
17 without prejudice for lack of jurisdiction.

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19 Dated: September 18, 2018

  
PERCY ANDERSON  
United States District Judge

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22 Presented by:

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24 John D. Early  
25 United States Magistrate Judge  
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